REMARKS/ARGUMENTS

Responsive to the Office Action mailed December 8, 2005:

I. NON-PRIOR ART MATTERS

A. The Office Action rejected claims 1-12 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Appropriate amendments are enclosed.

As to relative terms such as "high" and "thin", please note the following from the MPEP:

2173.05(b) Relative Terminology

The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. 112, second paragraph. *Seattle Box Co., v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification.

One of ordinary skill in the art would understand the terms "high" and "thin" in light of the specification.

Note in particular that the claims have been amended to refer to a "photo-curable polymer" rather than a stereolithography resin. One of ordinary skill in the art would know what such photo-curable polymers comprise, as evidenced by the discussion of same in U.S. 6,482,576 (Farnworth) at Col. 6 lines 4 – 17.

As to the sequence of claim steps, note the following:

> The elements of a method claim are typically recited in the sequence in which the steps performed. If the claim does not expressly indicate that steps are performed simultaneously or in a different order than the sequence in which the elements appear, the reader of the claim will assume the steps are performed in the sequence of the appearance.[1]

[1] Landis on Mechanics of Claim Drafting, 5th ed., § 4:3

B. The Office Action objected to the disclosure because of certain informalities that there appears to be a mixture of manufacturers and trade names for resins.

An appropriate amendment has been made to the Specification.

II. PRIOR ART MATTERS

A. The Office Action rejected claims 1-12 under 35 USC 103(a) as being unpatentable over Hanna in view of Farnworth. Applicant respectfully traverses the rejection.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.[2] If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.[3]

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.[4]

Applicant respectfully traverses the § 103 rejection because the office action has not established a *prima facie* case of obviousness.

The references do not teach or suggest all the claim limitations.

In regard to the independent claims, the references do not teach the step of "pre-sizing the ear shell thickness to account for increased thickness added by steps..." Applicant indicates the importance of this step at p. 4.

Thus, claims 1, 6, and 10 are patentable.

Claim 3 is cancelled and its limitations incorporated into claim 1.

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[2]MPEP Sec. 2142.
[3] Id.
[4]Id. (emphasis supplied)

Claims 2-5, 7-9, and 11-12 contain additional elements or limitations beyond allowable claims and are also allowable.

For the above reasons, Applicant respectfully requests the allowance of all claims and the issuance of a Notice of Allowance.

Respectfully submitted,

Dated: 4/4/06

By: _____

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